

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

WANDA JO IRWIN, et al

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2:04CV15-P-A

**CATERPILLAR, INC. AND
J.A. RIGGS TRACTOR CO.**

DEFENDANTS

ORDER

This cause is before the Court on the defendants' Motion in Limine to Exclude Evidence of Annuity Payments [65-1]. The Court, having reviewed the motion, the response, the briefs of the parties, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

That the motion should be granted in part and denied in part. Defendants seek to prevent plaintiffs from claiming as additional damages lost annuity payments pursuant to the National Vaccine Injury Compensation Program, including the use of such payments in calculating the present net cash value of the life expectancy of the decedent.

Defendants argue that the payments were not a source of income to Irwin; instead, the payments were for certain designated medical expenses and should not be included as economic damages. Defendants overstate their position. While certain of the annuity payments were for future medical expenses, others were intended to compensate Irwin for future pain and suffering and lost wages. The annuity payment reflecting an award for lost wages is clearly relevant to any fair assessment of the economic value of Irwin's life expectancy. This is not so evident with regard to the annuity payments for future medical benefits and pain and suffering.

Plaintiffs are free to introduce evidence of the annuity payment relating to lost future earnings, including expert testimony based on said annuity payment. However, plaintiffs are prohibited from offering any testimony, lay or expert, with regard to any annuity payments intended to cover future medical expenses and/or pain and suffering.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendants' Motion in Limine to Exclude Evidence of Annuity Payments [65-1] should be, and hereby is, GRANTED IN PART and DENIED IN PART.

SO ORDERED, this the 25th day of April, 2005.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE